

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

---

ARTHUR BOTANY,

Plaintiff,

v.

Case No. 10-C-0762

OFFICER MARTIN,

Defendant.

---

**ORDER**

---

The plaintiff, who is incarcerated at the Wisconsin Secure Program Facility, filed a pro se civil rights complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. He was allowed to proceed on his claims against defendant Officer Martin.

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the matter arises under federal statutes. Venue is proper under 28 U.S.C. § 1391. The case was assigned according to the random assignment of civil cases pursuant to 28 U.S.C. § 636(b)(1)(B) and General Local Rule 72.1 (E.D. Wis.). On April 20, 2011, the matter was reassigned to this court upon the consent of the parties to the exercise of jurisdiction by the magistrate judge.

The plaintiff filed a motion for summary judgment on May 18, 2011, which is now before this court. On June 1, 2011, the defendant filed an Answer to the plaintiff's complaint. At that time, the defendant also filed a motion for summary judgment based on the plaintiff's failure to exhaust administrative remedies. This motion included the proper notice required by the Civil Local Rules (E.D. Wis.). The plaintiff also was provided with

a copy of the rules outlining the procedures for filing and responding to motions for summary judgment.

The plaintiff's motion, filed before the defendant had filed an answer to the complaint, was premature and will be denied without prejudice. The plaintiff will have until July 7, 2011, to respond to the defendant's motion for summary judgment regarding exhaustion.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the plaintiff's motion for summary judgment (Docket #15) be and hereby is **denied without prejudice**.

**IT IS FURTHER ORDERED** that the plaintiff shall file a response to the defendant's motion for summary judgment on or before **July 7, 2011**.

Dated at Milwaukee, Wisconsin this 8th day of June, 2011.

BY THE COURT:

s/Patricia J. Gorence

PATRICIA J. GORENCE  
United States Magistrate Judge